

FEDERAL HISTORIC PRESERVATION TAX INCENTIVES PROGRAM

Current tax incentives for preservation, established by the Tax Reform Act of 1986, include a 20% credit for the rehabilitation of historic structures used for income-producing purposes, and a 10% credit for the rehabilitation of non-historic buildings constructed before 1936 and used for income-producing purposes other than residential. However, on December 22, 2005, President Bush signed House Resolution 4440, the ***Gulf Opportunity Zone Act of 2005 (GO Zone)***, which provides economic development incentives for the areas of the country that were devastated by Hurricane Katrina. One of the many benefits of this legislation is a provision to increase the preservation tax credits from 20% to **26%** and from 10% to **13%** for properties located in the Gulf Opportunity Zone, provided the qualified rehabilitation expenditures are incurred on or after August 28, 2005, and before January 1, 2010. [Please note that Congress has extended this deadline previously and is considering doing so again.]

20% (26% in GO Zone) REHABILITATION TAX CREDIT

The 20% (26%) rehabilitation tax credit equals 20% (26%) of the amount spent in a ***certified rehabilitation*** of a ***certified historic structure***. Thus, under ideal circumstances, if an owner spent \$100,000 restoring a historic building, he would get 20% (26%), or \$20,000 (\$26,000), worth of tax credit. Unused tax credit can be “carried back” one year and “carried forward” up to 20 years. Long-term lessees may also apply for the credit if the lease is at least 27.5 years for residential property or at least 39 years for nonresidential property.

A ***certified historic structure*** is a building that is either listed individually in the National Register of Historic Places, or located in a National Register-listed historic district **and** certified by the National Park Service (NPS) as contributing to the historic significance of that district. To determine if a property is listed on the National Register, a property owner may contact the Mississippi Department of Archives and History (MDAH) at (601) 576-6940. Owners of historic buildings that are not listed may use the Historic Preservation Certification Application, Part 1, to request a *preliminary determination of significance*. If the NPS determines that the property meets the National Register criteria, the owner may proceed with the rehabilitation project while the process of nominating the building or a district is underway.

The NPS must approve, or “certify,” all rehabilitation projects seeking the 20% (26%) tax credit. A ***certified rehabilitation*** is a rehabilitation of a certified historic structure that is approved by the NPS as meeting the Secretary of the Interior’s *Standards for Rehabilitation*. The Standards cover both interior and exterior work.

IRS Requirements

To be eligible for the 20% (26%) rehabilitation tax credit, a project must also meet the following basic tax requirements of the Internal Revenue Code:

- The building must be *depreciable*. It must be used in a trade or business or held for the production of income (offices; commercial, industrial or agricultural enterprises; or rental housing).
- The property must be placed in service (i.e., returned to use). Furthermore, the owner must hold the building and keep it in income-producing use for five full years after completing the rehabilitation, or pay back the credit. If the owner disposes of the building within a year after it is placed in service, 100% of the credit is recaptured. For properties held between one and five years, the tax credit recapture amount is reduced by 20% per year.
- The rehabilitation must be *substantial*, which means that during a 24-month period selected by the taxpayer, rehabilitation expenditures must exceed the **greater** of \$5,000 or the adjusted basis of the building. The adjusted basis is generally the purchase price, minus the cost of land, plus improvements already made, minus depreciation already taken. If the rehabilitation is completed in phases, the same rules apply, except that a 60-month measuring period is used.

- The building must be a *certified historic structure* when it is placed in service. This means, generally, that Part 1 of the Historic Preservation Certification Application must have been filed before the building was placed in service.

Application Process

To qualify for the tax incentives, property owners must complete the appropriate part or parts of the Historic Preservation Certification Application. Completed applications, along with photographs, are sent first to MDAH for review, and then are forwarded to NPS for final review and approval. The project is reviewed for compliance with the Secretary of the Interior's *Standards for Rehabilitation* and is certified only if the overall rehabilitation project meets the Standards. It is **strongly** recommended that the application be submitted for review and approval before starting work so that potential problems in compliance with the Standards, which might jeopardize the tax credit, can be avoided.

10% (13% in GO Zone) REHABILITATION TAX CREDIT

The 10% (13%) tax credit is available for the rehabilitation of **non-historic** buildings that were built before 1936 and that will be used for income-producing purposes other than residential. **Owners of historic buildings whose rehabilitation is denied certification for the 20% (26%) credit may not claim the 10% (13%) credit.**

As with the 20% (26%) tax credit, the rehabilitation must be *substantial*, meaning that the cost of the rehabilitation must exceed the **greater** of either \$5,000 or the adjusted basis of the property, which is generally the purchase price, minus the cost of land, plus improvements already made, minus depreciation already taken. The property must be *depreciable*. The 10% (13%) credit applies only to buildings rehabilitated for *non-residential* uses. Rental housing would not qualify; however, hotels would since they are considered to be in commercial use.

Buildings listed in the National Register of Historic Places are NOT eligible for the 10% (13%) credit. Buildings located in National Register historic districts are presumed to be historic and are, therefore, not eligible for the 10% (13%) credit, unless the owner files Part 1 of the Historic Preservation Certification Application and receives a determination from the National Park Service that the building does not contribute to the district and is not a certified historic structure. To determine if a property is listed individually on the National Register or located in a National Register historic district, or to request Part 1 of the Historic Preservation Certification Application, contact the Historic Preservation Division of MDAH at (601) 576-6940.

Projects undertaken for the 10% (13%) credit must meet the following physical test for retention of external walls and internal structural framework:

- at least 50% of the building's walls existing at the time the rehabilitation began must remain in place as external walls at the work's conclusion, and
- at least 75% of the building's existing external walls must remain in place as either external or internal walls, and
- at least 75% of the building's internal structural framework must remain in place.

The 10% (13%) credit must be claimed on IRS form 3468 for the tax year in which the rehabilitated building is placed in service. There is no formal review process for rehabilitations of non-historic buildings.

Additional Information

For additional information about the federal tax incentives or to request an application, please contact MDAH at 601-576-6940. Additional information about the federal tax program can be found on the National Park Service's web site (<http://www.nps.gov/history/tax.htm>) or (<http://www2.cr.nps.gov/tps>) and MDAH's web site (www.mdah.state.ms.us).

MISSISSIPPI'S STATE HISTORIC PRESERVATION TAX INCENTIVES PROGRAM

In March 2006, the Legislature passed and Governor Haley Barbour signed Senate Bill 3067, which created the Mississippi state historic preservation tax incentives program to encourage the rehabilitation of historic buildings. The Mississippi Department of Archives and History (MDAH) is responsible for the administration of the program, which provides for a state income tax credit equal to 25% of the qualified expenses of rehabilitating historic structures used for residential or business purposes. Properties do not need to be income-producing to qualify for the state tax credit; therefore, rehabilitations of owner-occupied residences are eligible. Only expenditures incurred after January 1, 2006, qualify.

Properties qualifying for the 20% (or 26% in the Gulf Opportunity Zone) federal preservation tax credit will also qualify for the state tax credit. In effect, the combined federal and state credits can reduce the cost of a certified rehabilitation of an income-producing historic structure by 45% (51% for properties located in the Gulf Opportunity Zone).

Eligible Properties

Properties eligible to receive the credits are those:

- individually listed in the National Register of Historic Places,
- contributing to the significance of a National Register historic district, or
- designated as Mississippi Landmarks.

Eligible Projects

1. To be eligible, the qualified rehabilitation expenditures must exceed:
 - \$5,000 in the case of an owner-occupied dwelling, or
 - 50% of the total basis in the property in the case of all properties other than owner-occupied dwellings. (Generally, "basis" is the purchase price, less the cost of the land, plus any improvements already made to the property, minus the depreciation taken on the property.)
2. All work must meet the Secretary of the Interior's *Standards for Rehabilitation*.
3. Only rehabilitation expenditures incurred after January 1, 2006, qualify.
4. Not-for-profit entities are ineligible to receive the credits.

Application Process

To qualify for the state tax credit, property owners must submit a three-part State Historic Preservation Certification Application, along with photographs, to MDAH. The state application is available by mail or may be accessed on MDAH's web site (www.mdah.state.ms.us). However, for properties that also qualify for the federal credits, the property owner need only submit the federal certification application, along with the one-page form, "Statement of Intent: Mississippi State Historic Preservation Tax Credit." MDAH reviews the entire project and certifies the project only if all work meets the Standards. It is **strongly** recommended that the application be submitted for review and approval before starting work so that potential problems in compliance with the Standards, which might jeopardize the tax credit, can be avoided.

The Department will issue a certificate verifying the eligible credit, and this certificate shall be attached to all income tax returns on which the credit is claimed. If the amount of the tax credit exceeds the total state income tax liability for the year in which the rehabilitated property is placed in service, the unused tax credit may be carried forward for the ten (10) succeeding tax years.

Additional Information

For additional information or to receive an application, please contact MDAH at 601-576-6940. The state tax credit application can also be accessed on MDAH's web site (www.mdah.state.ms.us).